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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 73 (RMB)

5 EVGENY BURYAKOV,

6  
7 Defendant.

8 -----x

Telephone Conference  
New York, N.Y.  
March 2, 2016  
12:0 p.m.

9  
10  
11 Before:

12 HON. RICHARD M. BERMAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

United States Attorney for the  
Southern District of New York

16 EMIL BOVE

17 STEPHEN RITCHIN

BRENDAN QUIGLEY

18 Assistant United States Attorney

19 WHITE & CASE

Attorneys for Defendant

20 DANIEL B. LEVIN

21 SCOTT E. HERSHMAN

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1 (In chambers)

2 THE COURT: Counsel, are you there?

3 MR. BOVE: Yes. Good afternoon, Judge. This is Emil  
4 Bove speaking, and I have with me for the government, Stephen  
5 Ritchin and Brendan Quigley and also, with the Court's  
6 permission, an intern from our office, Amy Sajak.

7 THE COURT: Sure. And Mr. Hershman, are you there  
8 too?

9 MR. HERSHMAN: Yes, your Honor. Hi. How are you?  
10 I'm here with Dan Levin.

11 THE COURT: I'm good, thanks.

12 MR. LEVIN: Good morning, your Honor.

13 THE COURT: Good morning, how are you?

14 So it's a phone conversation, obviously, and we don't  
15 have Mr. Buryakov present. Is that all right with you,  
16 Mr. Hershman?

17 MR. HERSHMAN: Yes, it is.

18 THE COURT: Can we say you're waiving his appearance  
19 for just purposes of this phone conversation?

20 MR. HERSHMAN: Yes, we're waiving his appearance.

21 THE COURT: So here I have some procedural issues I  
22 want to give you a heads up about in advance of tomorrow's  
23 conference. They are issues that I will raise, and I just  
24 wanted you to have a heads up and an alert that I will raise  
25 them. So, first, which I think everybody's already aware of,

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1 we have a new indictment in this case; is that right, Bove.

2 MR. BOVE: Yes, your Honor, that's correct.

3 THE COURT: Could you just take a brief moment and  
4 tell me what its purpose is as compared to the existing  
5 indictment or what does it do? I know what it does, but just  
6 for the record to hear from you, what is the point of the S1?

7 MR. BOVE: This is Emil Bove again, Judge. Yes, your  
8 Honor, we filed a superseding indictment to basically create  
9 what we refer to as a trial indictment, a streamlined document  
10 that just tracks the statutory language that would be available  
11 as a public document during the trial and, if the Court is  
12 inclined, for the jury's review.

13 THE COURT: It seemed to me in some specifics to be  
14 narrower -- I don't know if that's the appropriate legal  
15 terminology -- than the current indictment in terms of some  
16 factual matters, such as contacts, alleged contacts, between  
17 and among Mr. Buryakov and others.

18 MR. BOVE: Yes, your Honor, that's correct. We did  
19 change the overt acts in the conspiracy count with an eye  
20 towards streamlining.

21 THE COURT: So, obviously, then, one purpose of  
22 tomorrow's conference is to have -- I don't think we've had it  
23 yet -- the arraignment with respect to S1. And very likely  
24 I'll ask you, Mr. Bove, the same questions in the courtroom  
25 that I'm posing to you right now. Is that all right?

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1 MR. BOVE: Yes, your Honor. Thank you.

2 THE COURT: Okay. And then, and relatedly, I'm about  
3 to issue an order to both of you which is a notice that I  
4 typically issue, and it's one I recently did in an unrelated  
5 matter but a criminal case also where the defendant was going  
6 to trial citing *Missouri v. Frye* and *Lafler v. Cooper*. And the  
7 citations will appear in the order just to ensure that the  
8 defendant -- this is principally for you, Mr. Hershman -- is  
9 aware of any options that have been presented, so plea versus  
10 going to trial, and that he's carefully gone over with you, you  
11 know, what the implications of his going to trial are, whether  
12 there's been plea discussions, etc., etc. You're probably  
13 familiar with those cases, but that notice will probably be  
14 posted in the next hour or so. I will ask that of you and the  
15 government, for that matter, tomorrow whether there have been  
16 plea discussions and whether defense counsel has discussed with  
17 Mr. Buryakov the implications of rejecting them or accepting  
18 them versus going to trial or not going to trial. All right?

19 MR. HERSHMAN: Thank you, your Honor. Yes.

20 THE COURT: Now, the next item has to do with, somehow  
21 related to, this second one, but this is the third item. It's  
22 pretty clear from the docket and from the documents I have  
23 sitting in front of me at this very moment that particularly,  
24 including without limitation, joint jury instructions in  
25 matters that are central, so to speak, the substantive charges,

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1 if you will, there's variation between what the government is  
2 seeking as the instruction and what the defense is proposing  
3 instead. It's not uncommon, but that requires a fair amount of  
4 work by me, which I'm happy to do, to reconcile those  
5 differences.

6 Then I have filings from the government, motions in  
7 limine, and filings from the defense, also motions in limine.  
8 Incidentally, with respect to the defense filing, I think I  
9 have a redacted filing only, but not the unredacted copy. Was  
10 that to be sent or is that on its way to me?

11 MR. HERSHMAN: Your Honor, it's Scott Hershman. We  
12 understood that the unredacted was on its way down to you or  
13 already there.

14 THE COURT: Oh.

15 MR. HERSHMAN: I'll look into that. I did intend to  
16 give you an unredacted copy.

17 THE COURT: No, no, I know, but it didn't get to  
18 chambers yet is all time saying.

19 MR. HERSHMAN: We'll get on that.

20 THE COURT: The point of this is that a trial is  
21 around the corner, and a lot of work is going to be done by me,  
22 by you, each of you as well. And I wanted to know or I will  
23 ask tomorrow if there is any discussion about a disposition of  
24 this case short of trial, when we're going to know about that,  
25 or if that bridge has been passed and full steam ahead and

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1 everybody needs to resolve all these motions and these  
2 disputes.

3 So do you have a sense of that? And I will probably  
4 ask the same question tomorrow.

5 MR. BOVE: Judge, I do have a sense, I think it's fair  
6 to say, but what I would ask for is an opportunity to confer  
7 with defense counsel, and then we can make a record on that  
8 tomorrow.

9 THE COURT: Okay. Mr. Hershman, does that work for  
10 you, too?

11 MR. HERSHMAN: Sure, yes, it does, your Honor.

12 THE COURT: So that's it. Those are the issues that I  
13 have on my short agenda, all of which -- normally I don't do  
14 phone conversations, but this is by way of heads up, and I  
15 thought it was perfectly appropriate. All these issues will be  
16 raised again tomorrow in any event.

17 That's what I have in mind. Do you have anything else  
18 you want to add for me, or no?

19 MR. HERSHMAN: It's Scott Hershman, your Honor. Thank  
20 you for the heads-up. We appreciate it. I think it will  
21 advance tomorrow. We intended to raise a couple of things  
22 tomorrow with you. They absolutely relate to some of the  
23 topics that you raised today, including but not limited to, for  
24 example, the superseding indictment. But I think this  
25 conference was helpful, and I want to evaluate how we present

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1 this tomorrow, and then we can do it at the conference.

2 THE COURT: Okay.

3 MR. HERSHMAN: If that's okay.

4 THE COURT: Yes, that's fine. I'm certain you will,  
5 but I want to ask you rather directly. Could you make sure  
6 that Mr. Buryakov is up to speed on even this phone  
7 conversation before we start tomorrow. So if you need some  
8 time in the back in the holding cell, or whatever, or if you're  
9 going to see him before then, just to make sure that he knows  
10 everything that we know.

11 MR. HERSHMAN: Of course. One way or the other, we'll  
12 do that.

13 THE COURT: Okay. Great. All right. Then I'll see  
14 you all tomorrow.

15 MR. HERSHMAN: Very good.

16 MR. BOVE: Thank you, Judge.

17 THE COURT: You bet. Thanks a lot.

18 (Adjourned)